

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 29, 2005

**To:** The Commission  
(Meeting of May 5, 2005)

**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SB 15 (Escutia)** Public Utilities Commission  
As Amended April 13, 2005

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** Oppose

**SUMMARY:** This bill would amend Public Utilities Code § 311 (e) to extend to 30 days the time period required between the service of an “alternate, as defined in that subsection, and the date the item to which the alternate pertains may be considered by the California Public Utilities Commission (Commission). Currently, § 311 (e) provides that items may not be rescheduled for consideration sooner than 10 days following service of an alternate item on all parties.

**DIGEST:** Existing law gives the Commission regulatory authority over public utilities and allows it to establish its own procedures, subject to statutory restrictions and constitutional requirements of due process. Existing law requires that certain alternate decisions [defined as “either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs”] related to any item appearing on the commission's public agenda, be served upon all parties to the proceeding without undue delay and be subject to public review and comment before it may be voted upon.

Existing law authorizes the commission to adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternate decision upon the parties.

This bill would amend Public Utilities Code § 311 (e) to require that the item may not be rescheduled for consideration sooner than 30 days following service of the alternate

decision upon the parties.

**DIVISION ANALYSIS (Legal):**

The increase in review time associated with the requirements of SB 15 could reduce the Commission's opportunity to consider substantive revisions to proposed decisions where the revisions are developed close to the time originally scheduled for consideration of the item, and thus reduce the Commission's procedural flexibility.

**LEGISLATIVE HISTORY:**

AB 2850 (Escutia), Chapter 1110, Statutes of 1994 established the current 10 day review period for alternate decisions.

**STATUS:**

SB 15 passed out of the Senate Energy, Utilities and Communications Committee on April 12, 2005 by a vote of 9-0. SB 15 is currently pending action on the Senate Floor.

**SUPPORT/OPPOSITION (verified April 25, 2005)**Support:

California Telephone Association's Independent Company Group  
SureWest Communications  
The Utility Reform Network (TURN)

Opposition: None on file.

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**Date:** April 28, 2005

BILL NUMBER: SB 15        AMENDED  
BILL TEXT

AMENDED IN SENATE   APRIL 13, 2005

INTRODUCED BY    Senator Escutia

DECEMBER 6, 2004

An act to amend Section 311 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 15, as amended, Escutia.   Public Utilities Commission   .

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory restrictions and constitutional requirements of due process. Existing law requires that certain alternate decisions, as defined, as to any item appearing on the commission's public agenda, be served upon all parties to the proceeding without undue delay and be subject to public review and comment before it may be voted upon. Existing law authorizes the commission to adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternate decision upon the parties.

This bill would require that the item may not be rescheduled for consideration sooner than ~~20~~ 30 days following service of the alternate decision upon the parties.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.   Section 311 of the Public Utilities Code is amended to read:

311.   (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting

forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision ,

"alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than ~~20~~ 30 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory

efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to commission Rules of Practice and Procedure, and not general orders, resolutions, or other substantive regulations.